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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FREECYCLESUNNYVALE, a California
unincorporated association,

No. C 06-00324 CW

Plaintiff/Counterclaim-
Defendant,

ORDER GRANTING
PLAINTIFF'S
MOTION FOR LEAVE
TO FILE A MOTION
FOR
RECONSIDERATION
AND GRANTING THE
MOTION FOR
RECONSIDERATION

v.

THE FREecycle NETWORK, INC., an
Arizona corporation,

Defendant/Counterclaimant.

[DOCKET NO. 86]

_____/

Plaintiff and Counterclaim-Defendant FreecycleSunnyvale's motion for leave to file a motion for reconsideration of the Court's August 10, 2007 order is GRANTED. Plaintiff claims that good cause exists to allow it to proceed on its motion for summary judgment based on its naked licensing arguments even though Defendant is not now prepared to file a cross-motion for summary judgment. Therefore, the Court will consider Plaintiff's motion for reconsideration.

Defendant and Counterclaimant the Freecycle Network opposes Plaintiff's motion for reconsideration. Having considered all of the papers filed by the parties and the content of Plaintiff's motion for summary judgment, the Court GRANTS Plaintiff's motion

1 for reconsideration. Plaintiff demonstrates that resolution of its
2 motion might significantly narrow the issues in the case for trial
3 and therefore prevent the parties from requiring expert witnesses.
4 Defendant argues that it will be prejudiced by consideration of the
5 motion at this stage of discovery but does not provide evidence
6 that it will. Defendant's counsel declares, "Without conducting
7 this pertinent deposition discovery, and subsequent expert
8 discovery, [Defendant] was unable to file its motion for summary
9 judgment as a cross-motion . . . by August 9, 2007."

10 Bandyopadhyay Declaration ¶ 4 (emphasis added). Further, Plaintiff
11 provides evidence that Defendant has no outstanding discovery
12 requests. See Corgill Declaration ¶ 3.

13 Defendant argues that it likely will need expert testimony to
14 oppose Plaintiff's motion on naked licensing. However, Defendant
15 cites no case in which expert testimony was used on the issue and
16 the Court is aware of none. Further, Plaintiff does not cite any
17 expert testimony in its motion. If Defendant continues to believe
18 it needs expert testimony to support its opposition to Plaintiff's
19 motion, it may include a motion pursuant to Federal Rule of 56(f)
20 with its opposition.

21 Plaintiff's motion for summary judgment will be heard on
22 September 27, 2007 at 2:00 pm. Defendant's opposition to the
23 motion shall be filed by September 6. Plaintiff's reply, if any,
24 shall be filed by September 13.

25 Plaintiff may file another motion for summary judgment on
26 January 17, 2008, noticed for hearing on February 28, 2008 and
27 Defendant may file a cross-motion. If Plaintiff does not file a
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1 motion for summary judgment on January 17, Defendant may do so on
2 January 24.

3 IT IS SO ORDERED.

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5 Dated: 8/24/07



6 CLAUDIA WILKEN
7 United States District Judge

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United States District Court
For the Northern District of California